REMARKS

Claims 1-17 remain pending in this application. Reconsideration is requested.

In response to the objection to claim 3 and the rejection of claims 8 and 16 under 35 U.S.C. § 112 second paragraph, claims 3, 8 and 16 have been amended in light of the comments in the Office action to eliminate any issue of indefiniteness or informality that may have existed. Withdrawal of these grounds of rejection is requested.

The rejection of claims 1-17 under 35 U.S.C. § 103 as being unpatentable over Rosenthal, U.S. Patent No. 5,077,476, in view of Braig et al., U.S. Patent No. 5,313,941 ("Braig") and Gozani, U.S. Patent No. 5,752,512, is respectfully traversed.

The present invention relates to improving the accuracy of non-invasive quantitative analyte measurements on a subject by a near-infrared (NIR) measurement device, by obtaining cross-product optical measurement terms from a plurality of optical measurement data terms obtained by the device, forming plural subsets of the cross-product terms and evaluating each subset against reliable measurement results (such as, for example, direct measurement results obtained invasively), where a particular subset of cross-product terms is selected for use in calibrating the NIR device to a subject based on preselected criteria related to the reliable measurement results.

The Office action proposes to substitute the equations of Braig et al. (col. 15, ll. 31-58) for the algorithms disclosed by Rosenthal. However, as recognized by the Examiner, Braig teaches that when using plural detection wavelengths, a cross-product term of all wavelengths is to be added to the concentration equation (EQ. 3, col. 15, line 50), and thus fails to disclose or suggest the claimed invention. Contrary to the position of the Office action, Gozani does not cure the deficiency of Braig with respect to the present invention.

Gozani merely discloses that a multiple regression analysis is applied to a database of simultaneously measured blood glucose parameters to determine the values of the coefficients of the linear glucose concentration equation (4) disclosed at col. 18, l. 44. Gozani neither teaches, discloses nor suggests taking subsets of cross-product optical measurement data terms for evaluation against a set of reliable measurement results, and selecting one of the subsets for use in calibrating the measurement data of the measurement device to the subject, as taught by the present application.

The multiple regression analysis using direct (invasive) measurement data to calculate constant coefficients disclosed by Gozani is in fact already disclosed in Rosenthal (see col. 6, ll. 37-40). Thus, Gozani adds nothing to Rosenthal with respect to optimization of measurement data accuracy.

Since neither Rosenthal, Braig, nor Gozani anywhere discloses, suggests or intimates a method of calibrating a NIR measurement device using selected cross-product optical measurement terms as claimed in claims 1-17 pending in this application, no combination of those prior art patents would achieve the claimed invention. Accordingly, favorable reconsideration of this application and the issuance of a Notice of Allowance are earnestly solicited.

Please charge any fee or credit any overpayment pursuant to 37 CFR 1.16 or 1.17 to Deposit Account No. 02-2135.

RESPECTFULLY SUBMITTED,					
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Attachments: Marked-Up Copies of Amendments